

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MICHAEL DAVITT,
 #91072

Plaintiff,

vs.

JAKE MURPHY,

Defendant.

3:10-cv-0244-HDM-RAM

ORDER

Plaintiff is a prisoner proceeding *pro se* and has submitted a complaint(#1) attempting to initiate a civil rights action pursuant to 42 U.S.C. § 1983. He has not submitted an application to proceed *in forma pauperis* or paid the filing fee. On at least three (3) occasions, the Court has dismissed civil actions commenced by Plaintiff for being frivolous.¹

Under 28 U.S.C. § 1915(g), “if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that is frivolous, malicious, or fails to state a claim upon which relief may be granted,” he may not proceed *in forma pauperis* and instead must pay the full \$350.00 filing fee in advance, unless he is under imminent danger of serious physical injury. “Section 1915(g)’s cap on prior dismissed claims applies to claims dismissed both before and after the statute’s effective date” of April 26, 1996. *Tierney v. Kupers*, 128 F.3d 1310, 1312 (9th Cir. 1997).

¹ See *Davitt v. Hellig*, 3:08-cv-0604-LRH-VPC; *Davitt v. McDaniel*, 3:09-cv-0028-ECR-RAM; *Davitt v. McDaniel*, 3:09-cv-0074-RCJ-RAM. The Court takes judicial notice of its prior records in the above matters.

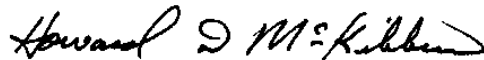
1 Plaintiff cannot proceed *in forma pauperis* in this action or any other civil action filed in any
2 federal court because he has had three (3) or more prior actions dismissed for failure to state a claim
3 upon which relief may be granted, or as frivolous or malicious. Plaintiff has not alleged, and the
4 subject matter of this action does not indicate, that he is in imminent danger of serious physical
5 injury.

6 Accordingly, on May 3, 2010, this court entered an order (#3) directing that this action would
7 be dismissed without prejudice unless plaintiff paid the \$350.00 filing fee in full within thirty (30)
8 days. Plaintiff has failed to pay the filing fee within thirty (30) days.

9 **IT IS THEREFORE ORDERED** that this action is dismissed without prejudice.

10 **IT IS FURTHER ORDERED** that the Clerk shall **ENTER JUDGMENT** accordingly.

11 DATED: June 29, 2010.

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14 UNITED STATES DISTRICT JUDGE
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